

STATE OF MICHIGAN
COURT OF APPEALS

ANNE HARRIER and PAUL HARRIER,

Plaintiffs-Appellants,

v

OAKWOOD SKILLED NURSING CENTER-
TRENTON and BALMORAL, INC.,

Defendants-Appellees.

UNPUBLISHED

March 27, 2007

No. 273729

Wayne County Circuit Court

LC No. 05-520445-NO

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiffs appeal by right from an order granting defendants' motion for summary disposition. MCR 2.116(C)(7) and (10). We reverse and remand for further proceedings. This appeal is being heard without oral argument pursuant to MCR 7.214(E).

We review a trial court's decision on a motion for summary disposition motion de novo, examining the pleadings, depositions, and documentary evidence presented to the trial court to ascertain if the moving party is entitled to judgment as a matter of law. *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006); *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Here, the trial court determined that plaintiffs' complaint sounded in medical malpractice and that the claims were barred by the two-year statute of limitations, MCL 600.5805(6). A trial court's determination regarding the proper classification of a claim as one sounding in ordinary negligence or medical malpractice is also reviewed de novo. *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

In *Bryant, supra*, the plaintiff resided in the defendant's facility because of her serious medical problems, and was so weak that she was unable to remain in position while in her bed. A medical doctor prescribed restraints, bed rails, wedges, and bumper pads to reduce the risk of positional asphyxia. Notwithstanding these many precautions, nursing assistants found the plaintiff tangled in her restraints. They untangled her, placed her in a better position and alerted a supervisor about the serious deficiencies with the restraints. A day later, the plaintiff was found with her neck pinned under a bed rail. She was not breathing, and she later died. The facility was sued. Among the allegations that were made was that the facility was guilty of ordinary negligence for failing to protect the deceased after it became aware of the hazard.

Bryant, supra, notes that medical malpractice can only occur within the course of a professional relationship. Medical malpractice claims also raise questions involving medical judgment that are beyond the expertise of lay jurors without the benefit of expert medical evidence. However, not every claim that involves medical treatment is a medical malpractice claim. *Id.* at 422-423. The *Bryant* Court held that three claims raised by the complaint were either not cognizable by Michigan courts, or were claims for medical malpractice. However, the plaintiff's claim for ordinary negligence was viable, where the defendant failed to protect the deceased after it became aware of the particular danger and failed to correct it. *Id.* at 430-431.

In this case, plaintiff Anne Harrier, then 85 years old, fell at the assisted living facility where she and her elderly husband lived. The fall caused a wrist fracture and broken ribs. Mrs. Harrier was briefly hospitalized, and then transferred to the Oakwood Skilled Nursing Center-Trenton (OSNCT). While Mrs. Harrier was able to care for herself prior to the fall at home, at OSNCT she needed assistance for almost all personal care, including using the toilet. Shortly after Mrs. Harrier was admitted to the OSNCT, she was left unattended while she was using the toilet, notwithstanding that a nurse had instructed an aide to assist Mrs. Harrier and to ensure that she was able to return to bed. Mrs. Harrier fell to the floor and sustained a broken hip.

Jeffrey Kovach, a registered nurse, testified that OSNCT did its own evaluation of Mrs. Harrier upon her admission, and determined that she needed assistance to prevent her from falling. An assessment document recognized the potential hazard for falling, and gave other important directions to the OSNCT staff relevant to preventing falls.

The complaint in this case alleges only that the defendants knew of the fall hazard but did not act properly in response to it. Plaintiffs maintain that their claim sounds in ordinary negligence. We agree.

The complaint does not allege any question involving medical judgment, but, rather, comes within the common knowledge and experience of lay jurors. We find that no expert testimony is necessary to show that defendants acted negligently by failing to respond appropriately to the knowledge that Anne Harrier was prone to falling, and that the aide was negligent by abandoning her patient in the face of that known danger. *Bryant, supra* at 431.

We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens